

Effective 5/12/2015

38-1a-805 Failure to file notice -- Petition to nullify preconstruction or construction lien -- Expedited proceeding.

- (1) An owner of an interest in a project property that is subject to a recorded preconstruction lien or a recorded construction lien may petition the district court in the county in which the project property is located for summary relief to nullify the preconstruction lien or the construction lien if:
 - (a) the owner claims that the preconstruction lien or the construction lien is invalid because:
 - (i) the lien claimant did not timely file a notice of preconstruction service under Section 38-1a-401; or
 - (ii) the lien claimant did not timely file a preliminary notice under Section 38-1a-501;
 - (b) the owner sent the lien claimant a written request to withdraw in accordance with Subsection (2); and
 - (c) the lien claimant did not withdraw the preconstruction lien or the construction lien within 10 business days after the day on which the owner sent the written request to withdraw.
- (2) A written request to withdraw described in Subsection (1) shall:
 - (a) be delivered by certified mail to the lien claimant at the lien claimant's address provided in the recorded preconstruction lien or the recorded construction lien;
 - (b) state the owner's name, address, and telephone number;
 - (c) contain:
 - (i)
 - (A) the name of the county in which the property that is subject to the preconstruction lien or the construction lien is located; and
 - (B) the tax parcel identification number of each parcel that is subject to the preconstruction lien or the construction lien; or
 - (ii) a legal description of the property that is subject to the preconstruction lien or the construction lien;
 - (d) state that the lien claimant has failed to timely file:
 - (i) a notice of preconstruction service under Section 38-1a-401; or
 - (ii) a preliminary notice under Section 38-1a-501;
 - (e) request that the lien claimant withdraw the lien claimant's preconstruction lien or construction lien within 10 business days after the day on which the written request to withdraw is sent; and
 - (f) state that if the lien claimant does not withdraw the preconstruction lien or the construction lien within 10 business days after the day on which the written request to withdraw is sent, the owner may petition a court to nullify the lien in an expedited proceeding under this section.
- (3) A petition under Subsection (1) shall:
 - (a) state with specificity that:
 - (i) the lien claimant's preconstruction lien or the lien claimant's construction lien is invalid because the lien claimant did not file a notice of preconstruction service or a preliminary notice, as applicable;
 - (ii) the petitioner sent the lien claimant a written request to withdraw in accordance with Subsection (2); and
 - (iii) the lien claimant did not withdraw the preconstruction lien or the construction lien within 10 business days after the day on which the owner sent the written request to withdraw;
 - (b) be supported by a sworn affidavit of the petitioner; and
 - (c) be served on the lien claimant, in accordance with the Rules of Civil Procedure, within three business days after the day on which the petitioner files the petition in the district court.

- (4)
 - (a) If the court finds that a petition does not meet the requirements described in Subsection (3), the court may dismiss the petition without a hearing.
 - (b) If the court finds that a petition meets the requirements described in Subsection (3), the court shall schedule an expedited hearing to determine whether the preconstruction lien or the construction lien is invalid because the lien claimant failed to file a notice of preconstruction service or a preliminary notice, as applicable.
- (5)
 - (a) If the court grants a hearing, within three business days after the day on which the court schedules the hearing and at least seven business days before the day on which the hearing is scheduled, the petitioner shall serve on the lien claimant, in accordance with the Rules of Civil Procedure, a copy of the petition, notice of the hearing, and a copy of the court's order granting the expedited hearing.
 - (b) The lien claimant may attend the hearing and contest the petition.
- (6) An expedited proceeding under this section may only determine:
 - (a) whether the lien claimant filed a notice of preconstruction service or a preliminary notice; and
 - (b) if the lien claimant failed to file a notice of preconstruction service or a preliminary notice, whether the lien claimant's preconstruction lien or construction lien is valid.
- (7)
 - (a) If, following a hearing, the court determines that the preconstruction lien or the construction lien is invalid, the court shall issue an order that:
 - (i) contains a legal description of the property;
 - (ii) declares the preconstruction lien or the construction lien void ab initio;
 - (iii) releases the property from the lien; and
 - (iv) awards costs and reasonable attorney fees to the petitioner.
 - (b) The petitioner may submit a copy of an order issued under Subsection (7)(a) to the county recorder for recording.
- (8)
 - (a) If, following a hearing, the court determines that the preconstruction lien or the construction lien is valid, the court shall:
 - (i) dismiss the petition; and
 - (ii) award costs and reasonable attorney fees to the lien claimant.
 - (b) The dismissal order shall contain a legal description of the property.
 - (c) The lien claimant may submit a copy of the dismissal order to the county recorder for recording.
- (9) If a petition under this section contains a claim for damages, the proceedings related to the claim for damages may not be expedited under this section.

Enacted by Chapter 303, 2015 General Session